

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Competitive Product Prices
International Business Reply Service
Competitive Contract 3 (MC2011-21)
Negotiated Service Agreement

Docket No. CP2015-52

PUBLIC REPRESENTATIVE COMMENTS ON
POSTAL SERVICE NOTICE OF FILING A FUNCTIONALLY EQUIVALENT
INTERNATIONAL BUSINESS REPLY SERVICE COMPETITIVE CONTRACT 3
NEGOTIATED SERVICE AGREEMENT

(March 25, 2015)

The Public Representative hereby provides comments pursuant to Order No. 2397.¹ In that Order, the Commission established the above referenced docket to receive comments from interested persons, including the undersigned Public Representative, on a Postal Service's Notice of its entry into an additional International Business Reply Service (IBRS) contract.²

Prices and classifications "not of general applicability" for IBRS contracts were previously established by Governors' Decision No. 08-24.³ In Order No. 684, the Commission added the International Businesses Reply Service Competitive Contract 3 (IBRS 3) product to the competitive product list, and included within that product an IBRS competitive contract that would serve as the baseline agreement for functional

¹ Notice and Order Concerning Additional International Business Reply Service Competitive Contract 3 Negotiated Service Agreement, March 18, 2015 (Order No. 2397).

² Notice of United States Postal Service Filing of a Functionally Equivalent International Business Reply Service Competitive Contract 3 Negotiated Service Agreement, March 16, 2015 (Notice).

³ See Request of the United States Postal Service to Add International Business Reply Service Contracts to the Competitive Products List, and Notice of Filing (Under Seal) Contract and Enabling Governors' Decision, Docket Nos. MC2009-14 and CP2009-20, December 24, 2008. Governors' Decision No. 08-24 is also filed (under seal) with the Notice.

equivalence comparisons with future agreements.⁴ Since the addition of the IBRS 3 product to the competitive product list, the Commission has determined that many additional agreements were functionally equivalent to the baseline agreement. The Commission subsequently included these agreements within the International Businesses Reply Service Competitive Contract 3 (MC2011-21) product.

IBRS competitive agreements permit businesses that sell lightweight articles to foreign consumers to offer these consumers a way to return the “articles to the United States for variety of reasons, including recycling, refurbishment, repair, or other value-added processing.” Notice at 4-5. In the current docket, the Postal Service requests that the Commission includes the instant contract within the IBRS Competitive Contract 3 (MC2011-21) product based on its functional equivalence to the baseline agreement filed in Docket Nos. MC2011-21 and CP2011-59 (IBRS 3 baseline contract). Notice at 3 and 6. The Postal Service intends for the instant contract to become effective on April 1, 2015. *Id* at 3. The contract will remain in effect for two calendar years from the effective date, unless terminated earlier. *Id* Attachment 1 at 2.

COMMENTS

The Public Representative has reviewed all the documentation that accompanied the Postal Service’s Notice, including the negotiated contract and supporting financial model (filed under seal). Based upon that review, the Public Representative concludes that the instant contract is functionally equivalent to the baseline agreement. In addition, it appears that the negotiated prices in the instant contract should generate sufficient revenues to cover costs and satisfy the requirements of 39 U.S.C. § 3633.

Functional Equivalence. The Postal Service asserts that the instant contract is functionally equivalent to the IBRS 3 baseline contract because “it shares similar cost and market characteristics . . . [and the] functional terms of the contract included in the filing and the functional terms of the IBRS 3 baseline agreement are the same.” *Id.* at 4. The Postal Service confirms that there are “minor differences between this contract and

⁴ Order Approving International Business Reply Service Competitive Contract 3 Negotiated Service Agreement, Docket Nos. MC2011-21 and CP2011-59, February 28, 2011 (Order No. 684).

the IBRS 3 baseline agreement.” *Id* at 5. Such differences include the name and address of the customer; revisions to numerous existing articles; an addition of Article 30 and a deletion of Annex 2. *Id.* at 5-6. The Public Representative agrees with the Postal Service that the observed differences do not “affect either the fundamental service that the Postal Service is offering or the fundamental structure of the contract.” *Id* at 6. The Public Representative concludes that the agreement subject of the current docket is functionally equivalent to the baseline agreement.

Requirements of 39 U.S.C. § 3633. Pursuant to 39 U.S.C. § 3633(a), the Postal Service’s competitive prices must not result in the subsidization of competitive products by market-dominant products; ensure that each competitive product covers its attributable costs; and, ensure that all competitive products collectively contribute an appropriate share of the institutional costs of the Postal Service.

The Postal Service’s financial model does not directly address whether the addition of the instant contract to the IBRS 3 product will result in the product as a whole covering costs as required by 39 U.S.C. § 3633(a)(2). However, the Postal Service’s financial model indicates that the negotiated rates in the instant contract will generate sufficient revenue to cover its attributable costs. In the FY 2013 Annual Compliance Determination (ACD) Report, the Commission determined that the IBRS 3 product covered costs.⁵ Therefore, the addition of the instant contract to the IBRS 3 product will not cause the product’s cost coverage to fall below 100 percent - assuming the product continues to cover its attributable costs. Under this assumption, the addition of the instant contract should allow the IBRS 3 product to continue to comply with 39 U.S.C. § 3633(a)(2), and should not result in competitive products as a whole being subsidized by market dominant products, in accordance with 39 U.S.C. § 3633(a)(1). Moreover, the IBRS 3 product should improve the likelihood that competitive products as a whole contribute an appropriate share to the Postal Service’s institutional costs, consistent with 39 U.S.C. § 3633(a)(3).

⁵ Docket No. ACR2013, *Annual Compliance Determination*, March 27, 2014, at 89.

The Public Representative respectfully submits the foregoing comments for the Commission's consideration.

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